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criminal tribunals for the former Yugoslavia and for Rwanda, and is codified in the Rome Statute for the International Criminal Court.

There are two forms of command responsibility. The first is direct responsibility for orders that are unlawful, such as when a military commander authorizes or orders rapes, massacres, or intentional attacks on civilians. The second is imputed responsibility, when a superior failed to prevent or punish crimes committed by a subordinate acting on his own initiative. This kind of responsibility depends on whether the superior had actual or constructive notice of the subordinates' crimes, and was in a position to stop and punish them.¹⁴⁷ If a commander had such notice, he can be held criminally responsible for his subordinates if he failed to take appropriate measures to control the subordinates, to prevent their atrocities, and to punish offenders.

For the doctrine of command responsibility to be applicable, two conditions must be met. A superior-subordinate relationship must exist, and the superior must exercise "effective control" over the subordinate. Effective control includes the ability to give orders or instructions, to ensure their implementation, and to punish or discipline subordinates if the orders are disobeyed. The International Criminal Tribunal for the former Yugoslavia (ICTY) in the "Celebici" case defined effective control as the superior "having the material ability to prevent and punish the commission" of violations of international humanitarian law.¹⁴⁸ The ICTY held that the

[d]octrine of command responsibility is ultimately predicated upon the power of the superior to control the acts of his subordinates. A duty is placed upon the superior to exercise this power so as to prevent and repress the crimes committed by subordinates.... It follows that there is a threshold at which persons cease to possess the necessary powers of control over the actual perpetrators of offense and, accordingly, cannot properly be considered their "superiors".... [G]reat care must be taken lest an injustice be committed in holding individuals responsible for the acts of others in situations where the link of control is absent or too remote.¹⁴⁹

¹⁴⁷ Constructive notice exists when offenses were so numerous or notorious that a reasonable person would conclude that the commander must have known of their commission.

¹⁴⁸ *Prosecutor v. Delali*, Judgment No. IT-96-21-T, Nov. 16, 1998 (Celebici case), para. 378. See also *Prosecutor v. Karanac, Kunac and Vokovic*, Judgment No. IT-96-23-T & IT-96-23/1-T, Nov. 22, 2001, para. 396.

¹⁴⁹ Celebici, para. 377.

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There is no statute of limitations for crimes against humanity or war crimes. Individuals who plan, organize, order, assist, commit or attempt to commit them can be prosecuted at any time, as can those with command responsibility for such acts. All states are obliged to bring to justice such persons, regardless of the place and time at which their crimes occurred. The Palestinian Authority, to the extent that it exercises authority, should take immediate steps to prevent the commission of such acts and to criminally prosecute the individuals who have ordered, organized, condoned, or carried them out.

The Participation of Children in Hostilities

International human rights and international humanitarian law have long prohibited the recruitment and use of children under fifteen years of age in hostilities.¹⁵⁰ There is growing international consensus that this threshold is too low, and that all children—internationally defined as those under the age of eighteen years—require increased protection from involvement in armed conflict.

As a result, in May 2000, the U.N. General Assembly adopted the Optional Protocol to the Convention on the Rights of the Child on the involvement of

¹⁵⁰Article 77(2) of Protocol I requires parties to the conflict to “take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, the Parties to the conflict shall endeavor to give priority to those who are oldest.” Article 38 of Convention on the Rights of the Child, adopted November 20, 1989, requires states parties to “take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities,” and to “refrain from recruiting any person who has not attained the age of fifteen years into their armed forces.” Similar provisions exist in international criminal law and international labor law. For example, article 8 of the Rome Statute of the ICC gives the court jurisdiction over the war crime of conscription or enlisting children under fifteen years into national armed forces or armed groups, or using them to participate actively in hostilities. Articles 1 and 3 of the International Labor Organization Convention no.182 includes the forced or compulsory recruitment of children under eighteen for use in armed conflict among the “worst forms of child labour” and requires states to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.” Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, adopted June 17, 1999 (entered into force November 19, 2000).

children in armed conflict.¹⁵¹ The Optional Protocol requires governments to take all feasible steps to ensure that children under the age of eighteen do not take direct part in hostilities; bans all compulsory recruitment of people under eighteen; and raises the minimum age for voluntary recruitment by governments. It also provides important additional protections against any recruitment or use of children under eighteen by armed groups that are not part of a state's armed forces. One hundred and ten states have signed the Optional Protocol since its adoption, and thirty-seven states have taken the necessary steps to ratify it.

The Optional Protocol states that "Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years." States Party are required to "take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices." These measures should also include "mak[ing] the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike," and taking "all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service," including "when necessary, accord[ing] to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration."¹⁵²

Although the PA is not a party to the Convention on the Rights of the Child (CRC) or its Optional Protocol, it has signaled its willingness to accept its standards by endorsing the April 2001 Amman Declaration on the Use of Children as Soldiers, which stated that "the use in hostilities of any child under eighteen years of age by any armed force or armed group is unacceptable."¹⁵³

¹⁵¹ Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted May, 2000. General Assembly resolution A/RES/54/263 (entered into force February 12, 2002).

¹⁵² Ibid, articles 4(1), 4(2), 6(2), and 6(3).

¹⁵³ Amman Declaration on the Use of Children as Soldiers, April 10, 2001.

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The PA also advocated the application of the Optional Protocol in a speech before the United Nations Special Session on Children in May 2002, emphasizing the urgency of the need to protect Palestinian children from the impact of armed conflict.¹⁵⁴ Human Rights Watch considers that, having made a moral commitment to the implementation of the CRC and its Optional Protocol, the PA should implement their provisions against the recruitment and use of children in hostilities.

¹⁵⁴ Statement of Dr. Emile Jarjou'i, Head of Delegation of the Observer Delegation of Palestine on the occasion of the Special Session of the General Assembly on Children, May 9, 2002 at www.un.org/ga/children/palestineE.htm (accessed June 6, 2002).

V. STRUCTURES AND STRATEGIES OF THE PERPETRATOR ORGANIZATIONS

Four Palestinian militant organizations have been responsible for almost all of the suicide bombing attacks against Israeli civilians during the current uprising: Hamas, Islamic Jihad, the al-Aqsa Martyrs' Brigades and the Popular Front for the Liberation of Palestine. Hamas and Islamic Jihad have pursued suicide bombings against civilians since the 1990s. The al-Aqsa Martyrs' Brigades and the PFLP began carrying out such attacks in 2002.

These same groups have been responsible for attacks against civilians using other means, such as targeted and indiscriminate shootings, which also constitute grave violations of international humanitarian law, as well as attacks against Israeli military targets. The following section discusses the structures and the public positions of these groups.

Human Rights Watch notes that leaders of each of these groups have demonstrated a significant degree of awareness of the fundamental norms of international humanitarian law. Three of the groups—Hamas, Islamic Jihad, and the PFLP—appear to be sufficiently well organized so as to be able to implement centralized policies that include upholding these fundamental norms. Therefore, in accordance with international law, and in particular the doctrine of command responsibility (discussed in section IV above), the leaders and those occupying positions of authority within these three groups can and should be held accountable for the war crimes and crimes against humanity that have been committed by members of their organizations. The same degree of organizational coherence and discipline does not appear to exist in the relationship between the al-Aqsa Martyrs' Brigades and Fatah. While the local leaders of the al-Aqsa Martyrs' Brigades are criminally responsible for crimes they ordered or oversaw, Fatah officials can be more appropriately said to bear a high degree of political responsibility for the crimes carried out in the name of their organization.

Two of the groups, Hamas and Islamic Jihad, have specifically sought to distinguish between their political or spiritual leaders and the commanders of their military wings—for example, Hamas's 'Izz al-Din al-Qassam Brigades or Islamic Jihad's Saraya al-Quds (Jerusalem Brigades). They have argued that specific decisions about the planning and carrying out of attacks are made by commanders of the military wings and that the overall political leadership is not privy to those decisions. However, criminal liability through command responsibility is not limited to the military chain of command. It also applies to political leaders, provided it can be shown that they exercise effective control over the subordinates who commit crimes under international law. As this

chapter demonstrates, the political leadership of these two groups have at times openly espoused, authorized, encouraged, or endorsed suicide attacks against civilians, and appear to have the authority to initiate or halt attacks as a matter of policy, even if they do not play a role in selecting specific targets.

For example, Ramadan 'Abdullah Shalah, the Damascus-based secretary-general of Islamic Jihad, has repeatedly and publicly declared the movement's adherence to all forms of resistance, including suicide operations.¹⁵⁵ During the period since September 2000, Islamic Jihad has generally refused to commit itself publicly to cease-fires proclaimed by the PA, but the organization has nevertheless refrained from carrying out attacks against civilians inside Israel during several such periods, suggesting that the organization's leadership exercises a considerable measure of control over local groups. In the case of Hamas, there is abundant evidence that the military wing is accountable to a political steering committee that includes Shaikh Ahmad Yassin, the group's acknowledged "spiritual" leader, as well as spokespersons such as Ismail Abu Shanab, 'Abd al-'Aziz al-Rantisi, and Mahmud Zahar. Yassin himself, as well as Salah Shehadeh, the late founder and commander of the 'Izz al-Din al-Qassam Brigades, have confirmed in public remarks that the military wing implements policies that are set by the political wing.

The PFLP also has a centralized political command structure. The organization has at no point argued that its military wing, the Martyr Abu 'Ali Mustafa Brigade, is acting independently from the political leadership.

The al-Aqsa Martyrs' Brigades, by contrast, emerged in late 2000 and early 2001 in refugee camps among militants who claimed an affiliation with Fatah, the largest Palestinian political organization. The available public evidence and testimony suggests that al-Aqsa Martyrs' Brigades militants take decisions under loose, personality-driven local command structures, with a degree of autonomy and improvisation not characteristic of the other organizations.

To the extent that the leaders of Hamas and Islamic Jihad may not have directly ordered or authorized specific suicide bombing attacks on civilians, the sustained and frequent nature of these attacks and the public claims of responsibility by the groups that have carried them out remove any doubt that the leaders of both groups are aware that their subordinates were carrying out these attacks. Although suicide bombings by the PFLP have been much less frequent, there are no grounds for thinking that the leadership is not aware when members carry out such attacks against civilians. In all three cases, these leaders thus had a duty to use all available means to try to stop their subordinates from

¹⁵⁵ See for example, Ibrahim Hamidi, "Shalah to al-Hayat: We have not sensed a change in the Syrian position towards the resistance," *al-Hayat*, May 14, 2002 (in Arabic).

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committing these crimes—a duty that, as described below, they have failed to fulfill. The leadership of Fatah similarly failed to use their political influence to end such attacks by the al-Aqsa Martyrs' Brigades.

Hamas (*harakat al-muqawama al-islamiyya*, Islamic Resistance Movement)

Since September 2000, Hamas has carried out more suicide bombing attacks on civilians than any other Palestinian group. Hamas was founded at the outset of the “first intifada” against Israeli military occupation, in December 1987. It emerged as a militant and activist offshoot of the Palestinian branch of the Muslim Brotherhood, which had traditionally avoided the activism and political violence pursued by Fatah and other secular Palestinian nationalist groups.¹⁵⁶

The Hamas bombings have been the most destructive in human terms, killing at least 168 persons, 153 of whom were civilians, and injuring more than 949. Hamas suicide bombings include some of the most notorious attacks, such as the Tel Aviv nightclub attack of June 1, 2001, which killed twenty-one, mostly teenagers; the Sbarro pizzeria bombing in Jerusalem on August 9, 2001, which killed fifteen; the March 27, 2002 bombing of the Seder in Netanya which killed twenty-eight; and the June 18, 2002 bombing of a crowded commuter bus in southern Jerusalem which killed nineteen.

Background

Hamas is frequently described as a nationalist, Islamist social movement. It has strong roots in the Palestinian lower middle class as well as in the Palestinian intelligentsia. The movement has a three-part identity: political, military, and social. Hamas, as a distinctive political movement, explicitly opposes many PA and Fatah policies. One knowledgeable Israeli analyst described Hamas as “an authentic product of Palestinian society under Israeli rule, more so than the PA.”¹⁵⁷ Hamas's image and popularity are significantly

¹⁵⁶ On the origins of Hamas as a political and social movement, see Ziad Abu-Amr, *Islamic Fundamentalism in the West Bank and Gaza* (Bloomington: Indiana University Press, 1994); Shaul Mishal and Avraham Sela, *The Palestinian Hamas: Vision, Violence, and Coexistence* (New York: Columbia University Press, 2000); and Graham Usher, “What Kind of Nation? The Rise of Hamas in the Occupied Territories,” in Joel Beinin and Joe Stork (Ed.s), *Political Islam: Essays from Middle East Report* (Berkeley and Los Angeles: University of California Press, 1997).

¹⁵⁷ Human Rights Watch interview with Reuven Paz, former academic director of the International Policy Institute for Counter-Terrorism research, Herzliya, June 9, 2002. In the mid-1990s, Paz was head of research for Israel's General Intelligence Service (Shin Bet). He is presently the director of the Project for the Study of Radical Islam.

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enhanced by its wide network of community-level charitable and welfare societies, some of which provide essential services that the PA does not provide. Its military wing, the 'Izz al-Din al-Qassam Brigades, has been in operation since 1991.¹⁵⁸ One Israeli press account, apparently based on intelligence reports, estimated that Hamas's military wing had 150 members in Gaza and roughly sixty to ninety members in the West Bank in mid-2001.¹⁵⁹ Hamas supporters are commonly thought to number in the tens of thousands.

In its charter, Hamas defines itself as a chapter of the Muslim Brotherhood in Palestine: a "unique Palestinian movement" that "owes its loyalty to God, derives from Islam its way of life, and strives to raise the banner of God over every inch of Palestine."¹⁶⁰ As stated in article 12:

Nothing is loftier or deeper in nationalism than a struggle [jihad] against the enemy and confronting him when he sets foot on the land of the Muslims.... Whereas other nationalisms consist of material, human, or territorial considerations, the Islamic Resistance Movement's nationalism carries all of that plus all the more important divine factors.

Hamas's charter effectively appropriates Palestinian territorial nationalism—once considered a form of idolatry by traditional Islamist movements such as the Muslim Brotherhood—as a function of religious belief.¹⁶¹ Also political, rather than religious, is the apparent Hamas goal of supplanting Fatah as the leading political and social force in the Palestinian territories.

¹⁵⁸ Shaikh 'Izz al-Din al-Qassam, of Syrian origin, lived and worked among displaced and landless Palestinian peasants in the Haifa area in the 1920s and 1930s, and was killed in a clash with British troops in November 1935. His death and funeral helped spark the 1936-39 Palestinian Arab revolt. See Rashid Khalidi, *Palestinian Identity: The Construction of Modern National Consciousness* (New York: Columbia University Press, 1997), p. 115. Khalidi characterizes the shaikh as "the first articulate public apostle of armed rural resistance" to Jewish settlements in Palestine.

¹⁵⁹ Yo'av Limor, "Terror Map of HAMAS and Islamic Jihad," *Ma'ariv* (Shabat Supplement), August 17, 2001, translated in FBIS, Near East and South Asia, August 20, 2001, FBIS-NES-2001-0817.

¹⁶⁰ All citations of the charter are based on the translation reproduced as Appendix Two in Mishal and Sela, *The Palestinian Hamas*.

¹⁶¹ Graham Usher characterizes the charter as "blend[ing] a socially puritanical version of Islam, an accommodation to PLO nationalism, and a rehash of Eurocentric anti-Semitism." "What Kind of Nation?" p. 340.

Involvement in Suicide Bombings

On April 6, 1994, a Hamas member carried out the first suicide bombing against Israeli civilians. The attack, in the northern city of Afula, killed eight and wounded thirty-four. The attack took place at the end of the mourning period for twenty-nine Palestinians killed at prayer in Hebron's Ibrahim mosque by an Israeli settler, Baruch Goldstein. It also appeared to have been timed to disrupt negotiations between Israel and the PLO over the implementation of the Oslo Declaration of Principles. Between 1994 and 1998, Hamas carried out further attacks to disrupt Israeli-Palestinian negotiations, enhance its position *vis-a-vis* other Palestinian factions, and undermine the Palestinian Authority.

When suicide bombing attacks against civilians resumed, in the early months of 2001, Hamas was in the forefront. Between January 2001 and July 31, 2002, the organization's military wing, the 'Izz al-Din al-Qassam Brigades, claimed responsibility for eighteen suicide bomb attacks against Israeli civilians, more than any other armed group. "They didn't find many recruits back in the nineties, when Hamas pioneered these attacks," a Palestinian journalist in the West Bank told Human Rights Watch. "The intifada, the Israeli siege, changed all that."¹⁶²

PA leaders have complained, and Hamas leaders have acknowledged, that Hamas's suicide bombings and other attacks against civilians may be couched in the language of retaliation, but are also intended to influence actual or potential Israeli-Palestinian political negotiations. One example was the March 27, 2002 attack on the Park Hotel in Netanya, which killed twenty-nine and wounded more than one hundred. "Our operation coincided with the Arab summit in Beirut," the Hamas communiqué noted, and "is a clear message to our Arab rulers that our struggling people have chosen their road and know how to regain lands and rights in full, depending only on God."¹⁶³

The Islamic Jihad's spokesperson, Mahmud Zahar, in an interview with the *New York Times*, also cited the late March 2002 negotiations conducted by General Anthony Zinni, special advisor to U.S. Secretary of State Colin Powell, to secure a cease-fire. "The Zinni mission was bad for us," he said, noting that its proposed terms included the disarmament of groups such as Hamas and the arrest of their leaders.¹⁶⁴ Hamas's rivalry with the Palestinian Authority also

¹⁶² Human Rights Watch interview, name withheld, Nablus, June 7, 2002.

¹⁶³ Translated from Arabic by Human Rights Watch.

¹⁶⁴ Joel Brinkley, "Arabs' grief in Bethlehem, bombers' gloating in Gaza," *New York Times*, April 4, 2002.

plays a role. "Our goal is not just to target Israelis but also Abu 'Ammar," Ismail Abu Shanab told Human Rights Watch, referring to President Yasir Arafat.¹⁶⁵

In late May 2002, Hassan Yusuf, a West Bank Hamas spokesperson, highlighted another tactical perspective when he told the *Washington Post*, "The [suicide attacks] are not a goal, they are a means. They are not sacred. They can be reviewed. But in exchange for what? For an end to the Israeli aggression against us.... You've got to discuss the basis of the problem. And the basis of the problem is the occupation."¹⁶⁶

During the same period, Hamas's "spiritual leader" Shaikh Yassin was asked if the group's leadership had discussed the option of stopping these attacks. "There is no subject that is not discussed within the movement," he told *al-Hayat*. "Every development is discussed. At the end, we reach common decisions."¹⁶⁷

These and other comments demonstrate that the Hamas leadership has pursued attacks against civilians as a conscious policy. A group that pursues multiple, intentional attacks against civilians as a matter of policy is responsible for crimes against humanity. Hamas political and military leaders alike can be held individually criminally responsible for these acts because of their direct complicity. In addition, in light of their ability to control the use of suicide bombing attacks against civilians in broad terms, they can be held criminally responsible under the doctrine of command responsibility.

Structure

The Hamas leadership is located both inside and outside the Occupied Territories. The "internal" leadership consists of a Gaza-based steering committee that includes, in addition to Shaikh Yassin, Ismail Abu Shanab, Mahmud Zahar, and 'Abd al-'Aziz al-Rantisi. This leadership is reportedly linked to the West Bank via a coordinating committee.¹⁶⁸ The "external" leadership, in the form of the organization's Political Bureau, was especially instrumental in determining social, political, and military policies until the late

¹⁶⁵ Human Rights Watch interview with Ismail Abu Shanab, Gaza City, May 15, 2002.

¹⁶⁶ Edward Cody, "Unclear U.S. Role Leaves Middle East Process at Impass," *Washington Post*, May 22, 2002.

¹⁶⁷ Fathi Sabbah, "Hamas leader to al-Hayat: Resistance, not reform, is the Palestinian demand right now," *al-Hayat*, May 22, 2002, translated in *Mideast Mirror* (London), May 22, 2002.

¹⁶⁸ Mishal and Sela, *The Palestinian Hamas*, p. 58. The book also includes as Appendix One a chart indicating Hamas's internal structure, in which most of the links between institutions and sectors are informal.

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1990s. The balance between internal and external leadership reportedly shifted following Israel's release from detention of Shaikh Yassin in 1997 and the Jordanian government's subsequent crackdown on Hamas activities there in August 1999.¹⁶⁹ The enhanced influence of the "internal" Gaza-based leadership of Hamas, along with more effective security cooperation between Palestinian and Israeli security services, contributed to a halt in suicide attacks against Israeli civilians in the 1999-2000 period.¹⁷⁰

The "external" leadership, the Political Bureau, includes bureau chief Khalid Mish'al and deputy chief Musa Abu Marzuq and now operates from Damascus. The continued influence of the external Political Bureau is reflected in reports that it, along with the group's military cadres, "looked askance" at recent negotiations in Gaza among all Palestinian factions, including Hamas, to come up with a joint platform that would, among other things, subject all the groups to unified leadership and policies and confine "resistance activities" to the West Bank and Gaza Strip.¹⁷¹

Hamas activities in the West Bank have traditionally been centered in the Nablus area in the north, including an-Najah University, and the Hebron area in the south. Several sources interviewed by Human Rights Watch said there is no single Hamas leadership on the West Bank. Instead, each area has separate links to Gaza and Damascus, and also receives public legitimization from externally based religious authorities such as Shaikh Yusuf Qardawi, an influential Egyptian-born cleric living in Qatar.¹⁷² The organization also has links with Iran

¹⁶⁹ For an account of Yassin's release and the circumstances that preceded it, see "Israel releases nine prisoners in deal for Mossad agents," CNN, October 13, 1997 at <http://www.cnn.com/WORLD/9710/13/israel.hamas/> (accessed September 3, 2002).

¹⁷⁰ Israeli analyst Reuven Paz, writing in December 1999, judged that the Amman-based Hamas leadership "has placed greater emphasis on the military side of the struggle—concentrating mainly in the struggle against Israel rather than on gaining the local support of the Palestinian society in the Territories." See Reuven Paz, "Hamas Analyzes its Terrorist Activity," International Policy Institute for Counter-Terrorism (ICT), December 21, 1999 at <http://www.ict.org.il> (accessed September 3, 2002). Ely Karmon, another analyst with the ICT, wrote that the reason for the decline in attacks by Hamas and Islamic Jihad in that period "was due to the combined preventive counter-terrorist policy of the PA and Israel." Ely Karmon, "Hamas' Terrorism Strategy: Operational Limitations and Political Constraints," *Middle East Review of International Affairs*, vol. 4, no. 1 (March 2000), p.66.

¹⁷¹ Graham Usher, "Cease-fires that cannot be," *Middle East International*, August 16, 2002.

¹⁷² Shaikh al-Qardawi appears frequently on the Qatar-based al-Jazeera television network. According to a Jazeera transcript of a broadcast on December 11, 2001, Shaikh al-Qardawi said, "Palestinians are resisting occupation and therefore have the right to use all means to defend their rights." He disputed "those who say that these operations target

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and the Hizbollah movement in Lebanon, dating back to Israel's December 1992 expulsion to south Lebanon of some 415 Palestinian Islamist activists, most of them affiliated with Hamas.¹⁷³

Despite its geographical spread, the Hamas leadership appears to be well organized and effective, capable of pursuing consistent policies and enforcing compliance with instructions. Shaikh Yassin and other Hamas leaders have confirmed that decision-making responsibility in Hamas lies with the political leadership. In a June 6, 2001 interview, for example, Yassin disputed reports that the 'Izz al-Din al-Qassam Brigades had declared a truce. "The political wing, not the military wing, drafts the policies of Hamas," Yassin said. "The military wing implements the policies that are drawn up by the political wing." In the same interview, Yassin attempted to disclaim any personal responsibility for the suicide bombing attacks on the grounds that he was not involved in "planning" them. "[Israel] knows more than anyone else that Shaikh Ahmad Yassin has nothing to do with the planning of suicide operations," he said. "Military work needs experts. I spend all the day in meetings and audiences with people. How can I plan suicide operations when my house is always full of citizens and people who come seeking solutions to their problems?"¹⁷⁴ However, Yassin did not deny authorizing attacks.

The late founder and head of the 'Izz al-Din al-Qassam Brigades, Salah Shehadeh, also confirmed the primacy of the Hamas steering committee over the

civilians," arguing that "they have militarized the society so that all Israeli men and women are soldiers...." See transcript, "The Intifada and Suicide bombing" at <http://www.al-jazeera.com/programs/shareea/articles/2001/12/12-11-1> (accessed April 23, 2002). In an April 4, 2001 broadcast, Shaikh al-Qardawi took issue with the judgment of a high Saudi Arabian religious official criticizing suicide attacks against civilians as not legitimate, arguing the need to distinguish "between suicide as an egotistic practice and suicide bombing as a last resort weapon and a defense of one's community and religion." See "Al-Qardawi: martyrdom operations are among the greatest forms of Jihad" at <http://www.al-jazeera.com/news/arabic/2001/4/4-22-9> (accessed April 23, 2002).

¹⁷³ Then-Prime Minister Yitzhak Rabin ordered the summary expulsions after Hamas claimed responsibility for killing five Israeli soldiers and policemen in a one-week period, including the murder in custody of a captured border policeman. The deportees remained camped near the Israeli border for most of 1993. Some 181 of the detainees were allowed to return in August 1993, and others subsequently. Israeli analyst Reuven Paz sees Hamas as drawing increasing political support from Iran, despite the movement's overwhelmingly Sunni character. Human Rights Watch interview with Reuven Paz, Herzliya, June 9, 2002.

¹⁷⁴ "Hamas Founder Yassin on Cease-fire, Suicide Operations, Ties with Hizballah," *al-Mujalla* (London), June 17-23, 2001. Translated from Arabic in Foreign Broadcast Information Service (FBIS), Near East and South Asia, June 17, 2001.

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military wing in terms of authorizing attacks on civilians. In an on-line chat posted on the 'Izz al-Din al-Qassam website prior to his assassination on July 23, 2002, Shehadah said:

We are the soldiers of the military wing, and the political wing does not tell us to do that or this, or execute this operation or that. However, the vision of the political wing is what we follow at the military section, and the political decisions have authority over the military wing....¹⁷⁵

In the same discussion, Shehadah said the respective regional military wings recommended "martyrs" to the main leadership, which made a final decision.¹⁷⁶

Salim Hija, described by the Israeli authorities as "a senior West Bank Hamas activist," was captured by the IDF in April 2002. The IDF has published extracts of what it says is Hija's interrogation, in which the Hamas structure is described as "small compartmentalized squads" that receive instructions from Hamas leaders in the West Bank and abroad.¹⁷⁷ A well-informed Palestinian journalist told Human Rights Watch that the current clashes had at least initially enhanced the role of some local Hamas leaders. Jamal Mansur, the Hamas leader in Nablus until he was assassinated in July 2001, was "more important than [Damascus-based Khalid] Mish'al," he said, while noting that "local decisions are referred to a higher level" before being implemented.¹⁷⁸ Qadura Musa, a

¹⁷⁵ "The Leader of the Military Wing of Hamas Reveals for the First Time The Secrets of the Martyrs, Their Operations and Their Weapons" (in Arabic) at <http://www.qassam.net/chat/salah3.html> (accessed June 15 2002). Translated by Human Rights Watch.

¹⁷⁶ Ibid. Shehadah said the organization bases its decision on various criteria, including piety, "detachment from the material world," honesty, obedience, courage, and dedication. "We may sometimes make mistakes in selecting people," he said. On Shehadah's role in Hamas, see <http://www.palestine-info.co.uk/hamas/index.htm> (accessed October 10, 2002). For the Human Rights Watch statement on the fourteen civilian casualties that occurred as a result of the IDF killing of Shehadah, see Human Rights Watch press release, "Israeli Airstrike on Crowded Civilian Area Condemned," July 23, 2002 at <http://www.hrw.org/press/2002/07/gaza072302.htm>.

¹⁷⁷ Appendix F, *Confession from the Interrogation of Salim Hija, Senior West Bank Hamas Activist*, in IDF compilation, "Nablus the Infrastructure Center of Palestinian Terrorism" at http://www.idf.il/arafat/schem/english/main_index.stm (accessed October 8, 2002).

¹⁷⁸ Human Rights Watch interview, name withheld, Nablus, June 7, 2002.

Fatah leader in Jenin, told Human Rights Watch, "When we needed political decisions from Hamas, we asked Jamal Mansur and Jamal Salim."¹⁷⁹

Hamas publishes a monthly magazine, *Filastin al-Muslimah*, in London, and maintains websites in both Arabic and English.¹⁸⁰

Islamic Jihad

Like Hamas, but some years earlier, Islamic Jihad rose out of the Muslim Brotherhood organization.¹⁸¹ Islamic Jihad was founded in 1982 by students at the Islamic University in Gaza, although the name was formally adopted only in 1987.¹⁸²

Unlike Hamas, whose ideology calls for the "liberation" of all of historic Palestine, Islamic Jihad sees the struggle for Palestine as a catalyst for an Islamic revolution throughout the Arab world.¹⁸³ Its most influential founders were Fathi 'Abd al-'Aziz al-Shikaki, a physician from the Rafah area of the Gaza Strip, and Shaikh 'Abd al-'Aziz 'Awda, from Gaza's Jabalya refugee camp.

¹⁷⁹ Human Rights Watch interview, Jenin refugee camp, June 10, 2002. Mansur and Salim were killed when an IDF helicopter gunship fired a missile into their office in a Nablus apartment building on July 31, 2001. The attack killed three other Hamas members, a journalist, two children, and injured several dozen.

¹⁸⁰ Accessible sites include <http://www.fm-m.com> (website of *Filastin al-Muslimah*, the Hamas-affiliated monthly magazine mentioned above), http://www.palestine-info.co.uk/index_e.htm and <http://www.palestine-info.info/arabic/hamas/index.htm> (accessed October 10, 2002). Other sites have been blocked, including <http://www.qassem.net> and <http://www.palestine-info.com>.

¹⁸¹ On the origins of the Palestinian Islamic Jihad, see Meir Hatina, *Islam and Salvation in Palestine* (Tel Aviv: Tel Aviv University, 2001) and Ziad Abu 'Amr, *Islamic Fundamentalism in the West Bank and Gaza* (Bloomington and Indianapolis: Indiana University Press, 1994).

¹⁸² Reuven Paz, "Higher Education and the Development of Palestinian Islamic Groups," *Middle East Review of International Affairs* vol. 4, no.2 (June 2000).

¹⁸³ "The Palestine problem is the central issue of the modern Islamic movements" was a leading Islamic Jihad slogan. Hatina, *Islam and Salvation*, p. 32. Abu 'Amr cites a 1980 publication reflecting Islamic Jihad's analysis that the present condition of Palestinians owed to "the opportunistic non-Islamic leaderships, which successively led the masses, or which seized power following the defeat of the Islamic state at the beginning of this century," and that the Arab nationalist movement "was a legitimate son of the Western assault against the Islamic nation," as was the Zionist movement. Abu 'Amr, *Islamic Fundamentalism*, p. 105.

Background

Islamic Jihad was influenced by, and interacted with, radical Egyptian Islamists in the 1980s, many of whom were inspired by Iran's Islamic revolution. The organization comprised for the most part young men, most with higher academic or professional degrees, who saw themselves as forming an elite vanguard rather than a broad community-based movement along the lines of Hamas, although the organization also maintained a civic component in the Gaza Strip. Islamic Jihad also recruited former activists from Fatah and the Palestine Liberation Army of the PLO; and Islamic Jihad students from Gaza attracted adherents in West Bank university towns such as Nablus, Ramallah, and Hebron.¹⁸⁴ In addition, prisons proved to be important recruiting grounds. Early on, the organization established small clandestine cells to carry out armed attacks against Israeli targets, both military and civilian. Islamic Jihad's tactical links with Fatah in the West Bank came under severe strain after the November 1988 "two-state" decision of the Palestine National Council, which Islamic Jihad dismissed as a "contaminated peace" that would "divide the homeland, the homeland of faith."¹⁸⁵

Islamic Jihad's own "introduction" states as its main principle: "Palestine—from the river to the sea—an Arab, Islamic land whose jurisdiction prohibits giving up any inch of its land." The same document defines the goal as "preparing the Palestinian people for martyrdom as well as preparing them politically and militarily and in all educational, cultural and organizational methods ...to qualify them to carry on their martyrdom duties toward Palestine."¹⁸⁶ Ramadan Shalah, the organization's secretary-general, in a published contribution to an "internal debate," defined "the goal of the Islamic movement within Palestine" as "Liberating Palestine, all of Palestine, and eliminating the Zionist state within it."¹⁸⁷ In a May 2002 interview in Beirut, Shalah reaffirmed that "[w]here we are concerned, the whole of Palestine is occupied territory," but added: "In the current intifada, however, all Palestinian

¹⁸⁴ Hatina, *Islam and Salvation*, pp. 23-28.

¹⁸⁵ Ibid., Islamic Jihad manifesto, p. 68.

¹⁸⁶ See "Introduction to the movement and its vision" (in Arabic) at <http://www.qudsway.com> (accessed October 10, 2002). Translated by Human Rights Watch.

¹⁸⁷ The Oslo agreement, Shehadah also wrote, "demolished the foundations of the Palestinian resistance.... The Islamic movement entered a period of crisis that had more or less led to the breakdown of its military infrastructure, where it lost most of its human and financial resources." See *al Intiqad* (Lebanese weekly), no. 924, March 2002 (in Arabic) at <http://www.qudsway.com>. Translated by Human Rights Watch.

factions including Islamic Jihad are agreed that the objective of Palestinian resistance today is to roll back Israel's occupation of the West Bank and Gaza unconditionally."¹⁸⁸

Islamic Jihad's strong affiliation with the revolutionary character of the Islamic Republic of Iran was enhanced by the Rabin government's expulsion of some 415 Palestinian Islamist militants, mostly Hamas supporters but including about fifty Islamic Jihad militants as well, to south Lebanon in December 1992. There, "its proximity to Hizbollah turned the movement into a quasi-military organization," and Islamic Jihad carried out attacks on Israeli forces in south Lebanon, including some joint attacks with Hizbollah.¹⁸⁹ These years appear to have solidified a pattern of Iranian patronage of the organization that reportedly continues to the present.¹⁹⁰

Involvement in Suicide Bombings

In the aftermath of the Oslo Accords, Islamic Jihad revived its campaign of attacks against Israeli targets, which included suicide bombings against civilians as well as military targets. In a presentation on its website about its military wing, Saraya al-Quds, Islamic Jihad asserts that the formation of a military wing dates from 1992, "when the martyr Mahmud al-Khawaja established an organized military agency to replace the different unorganized, individual groups."¹⁹¹ This statement also claims that "the military wing of Jihad was the first to introduce those tactics," referring to suicide bombers (*istishadiyin*).¹⁹² A

¹⁸⁸ Ibrahim Hamidi, "Islamic Jihad reiterates possibility of end to attacks on civilians," *Daily Star* (Beirut), May 16, 2002.

¹⁸⁹ Hatina, *Islam and Salvation*, pp. 110-11.

¹⁹⁰ Hatina cites al-Shikaki's denial that most of the organization's resources were provided by Iran, and notes that this patronage "did not necessarily mean the receipt of total or unequivocal loyalty." *Ibid.*, pp. 111-12. Independent Palestinian analysts, as well as leaders of other Palestinian organizations and the Palestinian Authority, told Human Rights Watch that in the northern West Bank, Islamic Jihad did not lack for financial resources. Haidar Irshaid, the deputy governor of Jenin, said he "was not authorized" to give the PA view of this matter but did say he had "heard" that Islamic Jihad funding in the area came from Iran and Syria. Human Rights Watch interview with Haidar Irshaid, Jenin, June 10, 2002.

¹⁹¹ "From Qassam to Saraya al-Quds," *al-Intiqad*, no. 924 (in Arabic) at <http://www.qudsway.com> (accessed October 3, 2002). Translated by Human Rights Watch.

¹⁹² *Ibid.* In this account Islamic Jihad writes that, "the main obstacle faced by Qassam was that their members were being detained by the Palestinian Authority." The account contends that PA torture of one Jihad member led to the identification and subsequent assassination (on July 22, 1995 in Gaza) of Mahmud al-Khawaja, "one of the most vital

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January 1995 attack killed twenty IDF soldiers at the Beit Lid junction near Netanya. Al-Shikaki, in a March 1995 interview, stressed the need for "unconventional" means to create a "balance of fear" that would help to offset Israel's conventional military power.¹⁹³ The Israeli assassination of al-Shikaki in Malta in October 1995 was followed by two suicide attacks against IDF forces in Gaza. Islamic Jihad then began attacking civilians. An attack in Tel Aviv in March 1996 killed twelve civilians and wounded about one hundred. Ramadan Shalah, another Islamic Jihad founding member of Gazan origins, succeeded al-Shikaki and remains today the secretary-general of the group, based in Damascus.¹⁹⁴

Islamic Jihad's Saraya al-Quds claimed responsibility for the first suicide bombing attack, against a military target, following the outbreak of the current clashes. On October 26, 2000, Nabil Farraj al-Arrir, an Islamic law student, rammed his bicycle against an IDF outpost near the Gush Katif settlement bloc, blowing himself up and lightly wounding a soldier. The date marked the fifth anniversary of the assassination of Islamic Jihad founder Fathi 'Abd al-'Aziz al-Shikaki. In a statement broadcast by al-Manar, the Lebanon-based television of Hizbollah, Islamic Jihad Secretary General Ramadan Shalah said, "[T]argeting the Israeli army in its fortified post by the *mujahid* this morning confirms that our option is jihad and we always target the Zionist army. If we wanted to kill civilians as this enemy is doing, it would have been easier for us."¹⁹⁵

Islamic Jihad's subsequent attacks revealed Shalah's commitment not to attack civilians as hollow. Between May 2001 and July 2002, Islamic Jihad carried out at least ten suicide attacks targeting civilians, or in circumstances where it was impossible to distinguish between civilians and legitimate military targets. At least twenty-eight civilians were killed in these attacks, and some 326 were wounded. According to Ramadan Shalah, Islamic Jihad's current rationale for attacks inside Israel is that "the Palestinian territories occupied in 1948 constitute the power base for the Israeli entity. It is from there that the tanks and

members of Jihad." According to Israeli analyst Meir Hatina, "Not surprisingly, members of the Islamic Jihad were the first to be imprisoned by the PA security forces in early 1994 and charged with 'harming the security of the homeland and the agreements signed by the PA.'" Hatina, *Islam and Salvation*, p. 88.

¹⁹³ The interview in *al-Sharq al-Awsat* of March 17, 1995, is cited in *ibid.*, pp. 87-88.

¹⁹⁴ In the early 1990s, Shalah taught at South Florida University and headed the Tampa-based Institute for Research of Islam and the Middle East. He relocated to Beirut in 1994 and then to Damascus upon succeeding al-Shikaki as head of Islamic Jihad.

¹⁹⁵ "Islamic Jihad secretary threatens more attacks against Israeli troops," al-Manar television (Lebanon), BBC Monitoring Middle East, October 26, 2000.

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planes come to bomb our villages and towns and kill our people.”¹⁹⁶ As noted above, this rationalization violates basic principles of international humanitarian law.

Structure

Islamic Jihad shares many features with Hamas, including its opposition to the Oslo Accords and its secretive, disciplined structure. According to one well-informed Palestinian journalist in the northern West Bank, “In Hamas and [Islamic] Jihad, nothing is done without a high-level decision from the top, and from outside [the West Bank], even if the initiative is local.”¹⁹⁷ “The Islamic Jihad secretary-general and other key figures are based in Damascus. While Islamic Jihad is sharply critical of PA policies, it does not, unlike Hamas, seek to rival Arafat and Fatah as the dominant Palestinian political force. Islamic Jihad is at least nominally a member of the Palestine Liberation Organization and is represented on the 124-member PLO Central Council.”¹⁹⁸

The clandestine, cell-based structure of the organization has made it difficult to estimate the size of Islamic Jihad. Palestinian analyst Ziad Abu ‘Amr, writing about the years of the first intifada, said that the organization’s supporters, “despite their small numbers compared to Hamas, were found all across the West Bank and Gaza.”¹⁹⁹ Israeli analyst Reuven Paz estimated that Islamic Jihad’s total numbers in the Occupied Territories during the current clashes probably were in the range of three to four hundred.²⁰⁰ The organization’s presence today appears strongest in Gaza and in the Jenin district in the northern West Bank.²⁰¹

¹⁹⁶ Ibrahim Hamidi, “Islamic Jihad reiterates possibility of end to attacks on civilians,” *Daily Star* (Beirut), May 16, 2002.

¹⁹⁷ Human Rights Watch interview, name withheld, Nablus, June 7, 2002.

¹⁹⁸ The two representatives are Ma’mun Asae al-Tamimi and Ibrahim Kamil al-Itr. For an updated list of the Central Council as elected by the twenty-first session of the Palestine National Council in April 1996, see <http://www.middleeast.reference.users.btopenworld.com.plocc> (accessed August 7, 2002).

¹⁹⁹ Abu ‘Amr, *Islamic Fundamentalism*, p. 96.

²⁰⁰ Human Rights Watch interview with Reuven Paz, Herzliya, June 9, 2002.

²⁰¹ “From Qassam to Saraya al-Quds” at <http://www.qudsway.com>, refers to Jenin as “a dynamic center and storage house for [Islamic] Jihad, as the enemy frequently points out.” This account also asserts that all but one of the Islamic Jihad suicide bombers had come from the Jenin refugee camp (accessed October 3, 2002).

Islamic Jihad's attacks against civilians included joint attacks with Hamas (the Sbarro bombing attack, on August 9, 2001) and with the al-Aqsa Martyrs' Brigades (a shooting attack on November 27, 2001). According to Palestinian intelligence documents made public by the IDF, Islamic Jihad and al-Aqsa Brigades members in Jenin enjoyed an unusually close relationship, in which Islamic Jihad sometimes undertook joint operations with al-Aqsa Martyrs' Brigades members and allegedly gave them financial support.

A leader of the attacks launched by Islamic Jihad from Jenin was Mahmud Tawalba, aged twenty-four, who was killed on April 8 during the IDF assault on the Jenin refugee camp. His mother told Human Rights Watch that those "who carried out bombings would go to Mahmud. He was in charge for more than one year after the intifada started." According to his mother, Tawalba had left school after the ninth grade and worked as a pipe fitter and plasterer. In the late 1990s, he worked for several years in Israel.²⁰² Five years ago, she said, he became increasingly religious and opened a shop selling religious cassettes in Jenin city. "Even before the intifada, he was thinking about paradise, thinking about a martyr operation," she said.

Tawalba searched out the Islamic Jihad organization, his mother said, rather than having been recruited. He received money from the organization, but she said she believed it was not a significant amount. "He got some money from Islamic Jihad but continued to work. He turned over the organization's money to the poor. He never had more than one hundred shekels in his pocket. He was satisfied, only thinking about martyrdom."²⁰³ She said that at first she had urged him to express his religiosity in other ways—"to build a mosque"—but that she came to support fully the "martyr operations." Another son, Murad, is currently serving a thirteen-year term in an Israeli prison after he was caught by Israeli security services on his way to carry out a "martyr operation," having been dispatched, she said, by Mahmud.

Ramadan Shalah, Islamic Jihad's secretary-general, has indicated on a number of occasions that attacks against civilians represent the policy of the organization as determined by its leadership. "We have already made many offers to reconsider our policy of targeting Israeli civilians inside Israel proper in exchange for Israel reversing its policy of killing Palestinian civilians," he told

²⁰² Jenin is directly adjacent to Israel's border with the West Bank, close to the Israeli town of Afula and not far from Haifa and the Galilee region. According to residents, a very large proportion of its workforce commuted to jobs in Israel prior to the outbreak of clashes in September 2000.

²⁰³ Human Rights Watch interview with Mahmud Tawalba's mother, Jenin, June 11, 2002.

an interviewer in May 2002.²⁰⁴ Shalah reaffirmed the group's intent to continue suicide bombings in a speech in Tehran few weeks later. According to *al-Hayat*'s summary of Shalah's remarks, the Islamic Jihad leader said that "the source of the ["martyrdom"] operations was Damascus," where Shalah is based, though "the planning and strategizing were all internally done."²⁰⁵

The al-Aqsa Martyrs' Brigades

The al-Aqsa Martyrs' Brigades emerged following the outbreak of Israeli-Palestinian clashes in September 2000 and consists of local clusters of armed activists, most of whom are apparently affiliated with Fatah. The impetus for the formation of the al-Aqsa Brigades came from militants residing in the Balata refugee camp, near Nablus, in late 2000 or early 2001.²⁰⁶ The al-Aqsa Martyrs' Brigades have claimed responsibility for attacks against Israeli military targets and also for several major indiscriminate shooting attacks against Israeli civilians inside Israel, including one in Afula in November 2001 and a second at a bat mitzvah in Hadera in January 2002, as well as multiple shooting attacks against Israeli settlers.²⁰⁷

The al-Aqsa Brigades claimed responsibility for at least twelve of the thirty-eight suicide bombing attacks against Israeli civilians in the January-August 2002 period. Unlike Hamas and Islamic Jihad, the al-Aqsa Martyrs' Brigades are linked to the ruling faction in the Palestinian Authority, rather than the political rivals of the PA and Fatah. The al-Aqsa Brigades' attacks against civilians have been considered by many—including the Israeli authorities—to reflect an official policy of support for suicide attacks against civilians by the leadership of Fatah, and, by extension, the PA.

²⁰⁴ Hamidi, "Islamic Jihad reiterates possibility of end to attacks on civilians," *Daily Star*.

²⁰⁵ Ibrahim Hamidi, "Shalah to al-Hayat: Our declaration from Damascus is a confirmation of the internal performance of the internal performance of our military wing," *al-Hayat*, June 6, 2002.

²⁰⁶ See for example, Matthew McAllester, "A potent, deadly militia," *Newsday*, March 10, 2002; Suzanne Goldenberg, "Israeli tank blows up leading militant," *Guardian* (London), May 23, 2002; and Ferry Biedermann, "Secular but deadly: the rise of the Martyrs' Brigades," *March* 19, 2002 at <http://www.salon.com/news/feature/2002/03/19/brigades> (accessed September 3, 2002).

²⁰⁷ On November 27, 2001 in Afula, two Israelis were killed and fourteen wounded. Responsibility for the attack was jointly claimed by Islamic Jihad and al-Aqsa Martyrs' Brigades. The bat mitzvah attack in Hadera took place on January 17, 2002. Six civilians were killed and more than a dozen wounded.

Background

The links between Fatah and al-Aqsa are complex, yet ill-defined. Leaders and militants of the al-Aqsa Brigades have regularly identified themselves with Fatah. The al-Aqsa Martyrs' Brigades' letterhead carries the Fatah emblem, as do their websites, which also link to Fatah communiqués and documents. The al-Aqsa Brigades' martyrdom posters and statements of responsibility display both the al-Aqsa Martyrs' Brigades and Fatah emblems. According to documents captured by the IDF in April 2002 and made public, al-Aqsa Martyrs' Brigades members in 2001 requested funds from Fatah officials for personal, as well as military, support. (See section VII.)

Fatah leaders have frequently asserted that the organization never took a decision to set up the al-Aqsa Martyrs' Brigades or to recognize their claim to be the "military wing" of the organization. On the other hand, to our knowledge, neither individual Fatah leaders nor the ruling council of the organization have contested this claim or publicly dissociated Fatah from the al-Aqsa Martyrs' Brigades. Indeed, as noted above, in comments to a local newspaper in March 2002, West Bank Preventive Security chief Jibril Rajoub reportedly characterized the al-Aqsa Martyrs' Brigades as "the noblest phenomenon in the history of Fatah, because they restored the movement's honor and bolstered the political and security echelon of the Palestinian Authority."²⁰⁸

At the local level, many Fatah leaders have maintained an ambiguous relationship with the al-Aqsa Martyrs' Brigades. While not disavowing or disowning the al-Aqsa Brigades, most Fatah leaders have claimed that there is no supervisor-subordinate role between Fatah and al-Aqsa Martyrs' Brigades members, and that they have never exercised effective control over the al-Aqsa Martyrs' Brigades.

On several occasions since February 2002, Fatah leaders reportedly undertook efforts to end attacks on civilians by the al-Aqsa Brigades (see below). At the time of writing, al-Aqsa Martyrs' Brigades leaders had openly defied these efforts. In trial proceedings, Fatah leader Marwan Barghouti or others may provide more definitive answers concerning the degree, if any, of Fatah leaders' command responsibility for the grave violations of international humanitarian law committed by the al-Aqsa Martyrs' Brigades.

Involvement in Suicide Bombings

In many interviews, local Palestinian analysts and Fatah members told Human Rights Watch that the al-Aqsa Martyrs' Brigades undertook suicide

²⁰⁸ Arie O'Sullivan and Lamia Lahoud, "Rajoub praises Aksa Martyrs Brigades," *Jerusalem Post*, March 19, 2002.

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bombings to counter growing public support for Hamas. (See above.) Although Fatah was always considered the pre-eminent PLO faction, its status and image suffered badly as a result of PA corruption and a widespread perception that it had lost the initiative to Hamas and Islamic Jihad in the struggle against Israel's military occupation. The al-Aqsa Martyrs' Brigades' first suicide bombing attack involved a tactic that guaranteed wide attention: the use of a female suicide bomber, Wafa' Idris. Since then, the al-Aqsa Brigades have explicitly differentiated themselves from Hamas and Islamic Jihad in their acceptance of female bombers. The al-Aqsa Brigades have also employed children: three of the perpetrators of al-Aqsa Brigades attacks in 2002 have been under the age of eighteen. (See below.)

The al-Aqsa Brigades' publicly justify their use of suicide bombings as the inevitable consequence of the sufferings of the Palestinian people. Ibrahim Abayat, leader of the al-Aqsa Brigades in the Bethlehem area, told an interviewer that attacks against civilians inside Israel "have come about as a result of the immense pressure endured by the Palestinian people lately.... These operations are completely unacceptable to us in al-Aqsa, but these operations do find some legitimacy when the occupation kills children and women in our camps in Jenin, Tulkarem, Nablus, Dheisheh...." When asked, "So, as a leader of the al-Aqsa Brigades, are you against suicide bombs?" Abayat was less categorical:

The bottom line is that I am just one person among this Palestinian people. What generates vengefulness against the Israelis [is] the silence of the Israeli people in regard to the policies of Sharon.... There must be a message to the Israeli street: what is happening is not in your interest.²⁰⁹

Structure

The al-Aqsa Martyrs' Brigades describe themselves as being firmly in the lineage of other Fatah armed groups, such as "The Storm" (*al-asifa*) and the "Fatah Hawks."²¹⁰ In one document, posted on an al-Aqsa Brigades website, an

²⁰⁹ Stuart Tanner, "Interviews with three Palestinian Militant Leaders," Battle for the Holy Land, PBS at <http://www.pbs.org/wgbh/pages/frontline/shows/holy/onground/pales.html> (accessed September 2, 2002). The interview was conducted on March 27, 2002, in preparation for a Frontline documentary, "Battle for the Holy Land," that first aired on April 4, 2002.

²¹⁰ See "The al-Aqsa Martyrs Brigades—Palestinian national liberation organization—Fatah", [*Kata'ib Shuhada' al-Aqsa, haraka al-tahrir al-watani al-filastini*] at

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anonymous member describes the al-Aqsa Brigades' creation after the September 2000 visit of Ariel Sharon to the Temple Mount (*al-haram al-sharif*) in Jerusalem:

At this point the Fatah movement got the long-awaited chance to adopt a new form and to continue the resistance of the persevering Palestinian people. A new phase has started to rise to the surface, with men who came with the sun like a storm, and who ran toward victory with the speed of leopards and the strength of falcons from afar in the sky of the nation. From here the al-Aqsa Brigades were formed in its different units in the southern and northern provinces of the nation [the West Bank and Gaza Strip]. And from there the National Resistance Committees and the Return (*'awda*) brigades were formed as an all-inclusive parameter for those sons of the nation and members of the Fatah movement who sought martyrdom.²¹¹

In an interview in the Lebanese weekly *al-Intiqad*, 'Usama an-Najjar, identified as an "official spokesman" for the al-Aqsa Brigades, said their Brigades had been established "in the first month of the intifada" and that "its establishment was officially announced on January 1, 2001, during the military parade in commemoration of the establishment of the Fatah movement [January 1, 1965]. The al-Aqsa Brigades consider the killing of a Zionist settler near the West Bank village of Jalameh at the beginning of 2001 as its first operation."²¹² Most of the al-Aqsa Brigades' important leaders appear to have come from the northern West Bank, and many have been captured, assassinated, or killed in clashes with the IDF.²¹³ Nasr 'Awais, Mahmud al-Titi, and Ra'id al-Karmi all openly acknowledged their role in the al-Aqsa Brigades prior to being captured or killed.

<http://www.alaqsamartyres.org> (accessed September 17, 2002). Translated by Human Rights Watch.

²¹¹ Ibid.

²¹² Excerpt and translation in "Statements by Heads of Fatah Factions," Special Dispatch Series no. 260, Middle East Media Research Institute (MEMRI), August 22, 2001.

²¹³ Israeli security forces have targeted individuals alleged to have planned or participated in attacks against Israeli military targets or civilians. Human Rights Watch has urged the Israeli authorities to end this practice. See Human Rights Watch press release and letter to then-Prime Minister Ehud Barak, "Israel: End 'Liquidations' of Palestinian suspects," January 29, 2001 at <http://www.hrw.org/press/2001/01/ispr012901.htm>.

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Human Rights Watch field research, IDF documents, and Palestinian commentators all indicate that the al-Aqsa Brigades do not share the centralized decision-making character of Hamas or Islamic Jihad. "The Aqsa Brigades are ordinary people who identify with Fatah and are reacting to Israeli attacks," said 'Awni al-Mashni, a member of the Fatah Higher Committee from Dheisheh refugee camp near Bethlehem and a critic of the militias. "Anyone could join and shoot at a settlement. Coordination emerged later."²¹⁴

At least one ranking al-Aqsa Brigades cadre has asserted a direct link between the militias and the Fatah leadership. "Our group is an integral part of Fatah," said Maslama Thabet, identified as a 33-year-old al-Aqsa Brigades leader in Tulkarem. "The truth is, we are Fatah itself, but we don't operate under the name of Fatah. We are the armed wing of the organization. We receive our instructions from Fatah. Our commander is Yasir Arafat himself."²¹⁵ Asked about Thabet's assertion, Arafat spokesman Nabil Abu Rudeineh insisted, "The president has nothing to do with these things, he has nothing to say about this issue."²¹⁶

Most observers, and al-Aqsa Brigades participants, disagree with Thabet's characterization.²¹⁷ According to "spokesman" 'Usama an-Najjar: "The members of the al-Aqsa Martyrs are warriors who are not subject to any political decision and have no relation with the first rank of the PA, although some of its members work in sensitive positions in the PA's civil ministries or its security apparatuses.... The Brigades respect the national interest and choose the place and the time to carry out its operations." He characterized the Brigades as comprising "hundreds of members, aged between twenty-two and fifty-two, who were released from Israeli prisons or students in Palestinian universities who operate sometimes with and sometimes without coordination."²¹⁸

Members of other armed groups agreed that the al-Aqsa Martyrs' Brigades are not a highly structured group. "Around here an Aqsa Brigade is any five or

²¹⁴ Human Rights Watch interview with 'Awni al-Mashni, Dhaisha refugee camp, June 13, 2002.

²¹⁵ Matthew Kalman, "Terrorist says orders come from Arafat," *USA Today*, March 14, 2002.

²¹⁶ Ibid.

²¹⁷ Israel has made public a February 2002 memo ("memo to Tirawi") from the head of the PA's General Intelligence Services (GIS) in Tulkarem, which refers to Maslama Thabet as "an outcast" among the al-Aqsa Brigades fighters there. (The "memo to Tirawi" is analyzed in detail in section VII, below.)

²¹⁸ Excerpt and translation from interview in *al-Intiqad* in "Statements by Heads of Fatah Factions," Special Dispatch Series no. 260, MEMRI, August 22, 2001.

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six guys who call themselves that," one PFLP member told Human Rights Watch in Jenin.²¹⁹ According to one high-level Western diplomat involved in security liaison between Israeli and Palestinian services, "there is no [al-Aqsa Brigades] infrastructure, just small groups making their own small decisions."²²⁰

These characterizations also conform to the statements of captured al-Aqsa Brigades members. 'Abd al-Karim 'Aweis, thirty-one, an al-Aqsa Brigades leader from Jenin refugee camp now in Israeli detention, told the *New York Times*, in an interview arranged by the Israeli internal security service, that the al-Aqsa Brigades' attacks were "organized at the local level, often in revenge for Israeli killings of suspected Palestinian militants, by volunteers who had let it be known that they were prepared to carry out suicide bombings or shootings."²²¹ Likewise, Lu'ay Shihab, an al-Aqsa Brigades member whose brother, Kamal Yusuf Shihab, was a middle-level al-Aqsa Brigades leader, told Human Rights Watch that Kamal would normally consult with Nablus and Balata camp-based al-Aqsa Brigades leaders Nasr 'Awais or Mahmud al-Titi before initiating an attack, but that "in urgent circumstances he could decide on his own."²²²

The localized nature of the al-Aqsa Brigades' structure appears to be reinforced by a loose, personality-driven command structure. None of the more than twenty compilations of Palestinian documents publicly released by the IDF provide substantive evidence of any chain of military command between al-Aqsa groups and Arafat or other high-ranking PA and Fatah officials. One report of the PA General Intelligence Services (GIS), made public by the IDF, analyzes three different armed Fatah cells in Tulkarem, at least two of which were explicitly associated with the Brigades.²²³ Comprising some twenty individuals in total, the groups described in the report appear to have opened contact with key Fatah and al-Aqsa Brigades figures on their own initiative, selecting one (or in the case of one group, several) patrons through whom they might channel requests for support. Members' relationships with Fatah appear to vary

²¹⁹ Human Rights Watch interview, name withheld, Jenin city, June 10, 2002.

²²⁰ Human Rights Watch interview, name withheld, Jerusalem, June 6, 2002.

²²¹ Joel Greenberg, "Suicide planner expresses joy over his missions," *New York Times*, May 9, 2002.

²²² Human Rights Watch interview with Lu'ay Shihab, Nablus, June 8, 2002. 'Awais was captured by Israeli forces during Operation Defensive Shield. Al-Titi was killed by an Israeli tank shell on May 22, 2002.

²²³ "Document Eight: Excerpts from a Document of the General Intelligence Apparatus in the West Bank," IDF, April 4, 2002, TR1-248-02, at http://www.idf.il/english/announcements/2002/april/Fatah_Activists/10.stm (accessed September 4, 2002).

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significantly, some close and reflecting deep involvement in internal power struggles, others remote.

Nasir Bardawi, an al-Aqsa Brigades commander from the Nablus area, told an interviewer in March 2002 that "there is no direct relationship at all" between the al-Aqsa Brigades and political leaders such as Yasir Arafat and Marwan Barghouti. But Bardawi also said that he considers the Brigades bound to obey any direct political order from the top to desist from armed attacks.²²⁴ In a separate interview, however, Bardawi insisted that "al-Aqsa was not formed by a leadership decision, and it will not be dissolved by their decision."²²⁵ The Brigades' reactions to Fatah attempts to dissolve them or bring their attacks on civilians to an end, described below, lend credence to this second characterization.

The role of Marwan Barghouti, Fatah's general secretary in the West Bank, is highly controversial. Israeli officials allege that Barghouti functioned as the head of the al-Aqsa Brigades until his arrest in April 2002. On August 14, 2002, Israel's Justice Ministry indicted him in the Tel Aviv District Court on charges that he is "the founder" of the al-Aqsa Brigades and that he used funds "from different sources both inside and outside Israel," including from the PA, "to finance many activities carried out by terror cells in the West Bank."²²⁶

Barghouti has not acknowledged that he played such a role, but documents made public by Israel indicate that, at a minimum, Barghouti functioned as a patron on behalf of several al-Aqsa Brigades groups, referring requests for individual financial assistance to Yasir Arafat. One well-informed Nablus-based Palestinian journalist told Human Rights Watch that Barghouti was "very popular and highly respected" in the area. "He was the struggle face of Fatah, but his main means of communication was interviews on Jazeera television," this person said. "When he said 'the intifada will continue' he was expressing policy, not just his opinion. But he resisted local al-Aqsa Brigades efforts to

²²⁴ Ferry Biedermann, "Secular but deadly: the rise of the Martyrs Brigades," March 19, 2002 at <http://www.salon.com/news/feature/2002/03/19/brigades> (accessed September 4, 2002).

²²⁵ Tim Cornwell, "If he wants to be a suicide bomber, he comes to us," *The Scotsman*, March 9, 2002. Nasir Bardawi is identified in this interview as "Yasser" Badawi.

²²⁶ According to an IDF Spokesman, August 15, 2002, the indictment charges that "the accused ... led the terrorist organizations in Judea and Samaria, and as such played a central role in all their decision making processes. The accused was subordinate to Yasser Arafat, who is the recognized head of all of these terrorist organizations." See also "The State of Israel versus Marwan Ben Hatib Barghouti," IDF, August 14, 2002 at <http://www.idf.il/english/ishumim/barghouti.stm> (accessed September 3, 2002).

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engage him in helping to set their agendas.”²²⁷ Human Rights Watch will examine evidence of the allegations against Barghouti and other militants made public in any trials that may be held.

Fatah leaders have repeatedly insisted that the military elements responsible for the attacks are not under the control of the political leadership. For example, Hussein al-Sheikh, a Fatah political leader who has frequently spoken supportively of the Brigades in the media, told Human Rights Watch, “I am against touching civilians.... I will tell you an important thing: not all military acts by al-Aqsa were done with the agreement of the political wing.”²²⁸

Muhammad ‘Abd al-Nabi, a Fatah leader from the Dheisheh refugee camp, noted that for many in the al-Aqsa Brigades, their professed identity with Fatah did not necessarily translate into compliance with Fatah decisions, such as the late May announcement of Fatah’s Central Committee calling for a halt to attacks inside Israel and the disbanding of the militias. “So someone records a cassette and says he’s Fatah—we can’t object to this,” ‘Abd al-Nabi told Human Rights Watch. “He’s a hero in the community. In the community the Central Committee doesn’t count for much.”²²⁹ Hussam Khader, a member of the Fatah Higher Committee from Balata refugee camp, decried suicide bombing attacks on civilians in an interview with Human Rights Watch but estimated that “[the bombings] have about 80 percent support.” “But leaders are supposed to lead,” he said. “The problem is the big gap between us and the traditional leadership. The new generations don’t respect them. There is no Fatah—only people who call themselves Fatah.”²³⁰

The disjuncture between official Fatah statements and the Brigades’ actions have been particularly clear on the several occasions on which Fatah leaders have attempted to shut down the Brigades. For example, on February 7, 2002, the Fatah leadership in Ramallah reportedly held a secret meeting in which it decided to dissolve the Brigades. A statement issued in the name of the Brigades in Gaza accepted the decision, but a second statement, faxed from the

²²⁷ Human Rights Watch interview, name withheld, Nablus, June 7, 2002. One al-Aqsa Brigades statement at the time the IDF launched Operation Defensive Shield referred to the Brigades as being “under the leadership of Marwan Barghuti.” “Al-Aqsa Brigades call for unity, name Barghuti as leader for first time,” Agence France-Presse, April 1, 2002.

²²⁸ Human Rights Watch interview with Hussein al-Sheikh, Ramallah, May 14, 2002.

²²⁹ Human Rights Watch interview with Muhammad ‘Abd al-Nabi, Dhaisha refugee camp, June 12, 2002.

²³⁰ Human Rights Watch interview with Hussam Khader, Balata refugee camp, June 7, 2002.

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West Bank, rejected it. "We denounce those who want to create confusion by announcing the dissolution of the Brigades," the statement said. "We remain faithful to the blood of our martyrs and will continue our operations."²³¹ In news reports on Arabic and Islamist websites, al-Aqsa Brigades leaders were widely quoted as saying that the Brigades had not been founded by the decision of any official organization or group—and they could not be disbanded by them, either.²³²

In late March 2002, Nasr 'Awais, by all accounts one of the leaders of the al-Aqsa Brigades in the northern West Bank, issued a leaflet in which he proclaimed himself the overall head of the al-Aqsa Brigades, and declared that, notwithstanding President Arafat's declarations of a cease-fire, the al-Aqsa Martyrs' Brigades "is continuing in the path of ...armed resistance.... We will compete with each other over who will become a martyr first."²³³ "President Arafat himself cannot ask us to accept being slaughtered by Israel like sheep without defending ourselves," 'Awais said in an interview. "They are continuing their occupation and, therefore, we will keep up the fight." 'Awais asserted that the al-Aqsa Brigades "aim only at their soldiers, but when they kill our civilians we can do nothing but respond."²³⁴

Palestinian and Israeli analysts told Human Rights Watch that some al-Aqsa Martyrs' Brigades adherents in the northern West Bank may also get some financial support from Munir Muqdah, a Fatah leader in the 'Ain al-Hilweh refugee camp in Lebanon, further complicating Arafat's limited influence in that region. Muqdah broke with Arafat in 1993 to protest the Oslo Accords, and is reputed to have close relations with Hizbollah, Iran, and Syria. In late May 2002, the Israeli daily *Ha'aretz*, citing Shin Bet sources, reported that captured Brigades leader Nasr 'Awais told interrogators that Muqdah had provided him with between \$40,000 and \$50,000 over the previous year for arms and explosives, and that the two spoke on a weekly basis.²³⁵ A *Jerusalem Post* report in August 2002 quoted an unnamed Fatah official as saying that Muqdah used

²³¹ "Fatah Splinter Group Denies Plans to Dissolve," Agence France-Presse, February 12, 2002.

²³² See for example, "Al-Aqsa Brigades Dissolved," (in Arabic) al-Jazeera February 12 2002 at <http://www.aljazeera.net/news/arabic/2002/2/2-12-3.htm> (accessed June 5, 2002). Translated by Human Rights Watch.

²³³ Mohammed Daraghme, "Palestinian militia linked to Arafat's Fatah says it will keep up attacks," Associated Press, March 22, 2002.

²³⁴ Nidal al-Mughrabi and Steve Weizman, "Palestinian militia won't halt attacks," *Ottawa Citizen*, March 23, 2001.

²³⁵ "Shin Bet: Lebanon Fatah man tied to Tanzim hits," *Ha'aretz*, May 27, 2002.

funds from Syria and Iran “to undermine the local Fatah leadership and establish his own bases of power here,” naming Jenin, Tulkarem, and Nablus.²³⁶

In May 2002, *al-Hayat* reported that the 130-member Fatah Revolutionary Council issued a statement condemning “military operations inside Israel...because they are likely to have a negative impact on national resistance.”²³⁷ But Fatah cadres later insisted the statement had not been issued. ‘Ali Mahbul, the Fatah secretary-general for the Nablus district, discussing the May 2002 draft statement in an interview with Human Rights Watch, said that the Fatah leadership had “discussed how to control reactions” of the al-Aqsa Brigades to Israeli attacks. “One suggestion is that Fatah leaders be assigned to monitor and control” the actions of the Brigades, “but the decision was not taken. We are still discussing it—very difficult and sensitive.”²³⁸

On August 12, 2002, responding to Fatah-led efforts to negotiate a joint platform of all factions on a halt to attacks against civilians inside Israel and a publicly declared moratorium on such attacks by Fatah, the al-Aqsa Brigades reportedly declared that it would in fact continue such attacks “unless Israel withdraws from the Palestinian territories, releases Palestinian prisoners and stops assassinating Palestinian leaders.”²³⁹ The same dynamic was repeated in mid-September 2002, when the text of a Fatah statement rejecting all attacks against civilians was leaked to the Israeli press—and sharply criticized by al-Aqsa leaders in the northern West Bank.²⁴⁰ At the time of writing, Fatah had not yet taken any concrete steps to disassociate itself from the al-Aqsa Martyrs’ Brigades or to apply political pressure to bring an end to the Brigades’ attacks on civilians. ‘Awni al-Mashni gave the view of many local Fatah leaders who have criticized suicide bombings against civilians when he told Human Rights Watch that implementing any initiative such as that considered in May by the

²³⁶ Khaled Abu Toameh, “New Fatah groups controlled by PLO dissident in Lebanon,” *Jerusalem Post*, August 26, 2002. The article also says that Muqdash supported the Battalions of Return, which it characterized as a “Fatah breakaway group.”

²³⁷ “Revolutionary Council and DFLP call for an end to attacks inside Israel,” *al-Hayat*, May 30, 2002 (in Arabic). The statement reportedly followed “two weeks of internal debate” and was to be distributed to the eleven groups that constitute the PLO.

²³⁸ Human Rights Watch interview with Ali Mahbul, Nablus, June 8, 2002.

²³⁹ Usher, “Cease-fires that cannot be,” *Middle East International*.

²⁴⁰ “Fatah Armed Wing Denies Cease-fire Reports, Vows to Continue Armed Struggle,” text of Israel radio report, BBC Monitoring Middle East, September 10, 2002.

Fatah Revolutionary Council would not be possible without some form of Israeli reciprocity. "Fatah may say stop," he said, "but no one will listen."²⁴¹

In sum, the al-Aqsa Martyrs' Brigades' command structure appears to be locally centered, but effective. The al-Aqsa Brigades members refrained from—or were incapable of—carrying out suicide bombings against civilians from November 2000 to January 2002. From January onward, the al-Aqsa Martyrs' Brigades' actions heralded a sharp increase in the frequency of suicide attacks. Al-Aqsa Brigades members who planned or participated in such attacks are individually criminally responsible for their actions; their local leaders can be held responsible both directly and, for attacks perpetrated by their local subordinates, under the doctrine of command responsibility. Based on currently available evidence, however, Human Rights Watch did not find that Fatah officials possessed a supervisor-subordinate relationship over the al-Aqsa Martyrs' Brigades or the effective control required to hold the Fatah leadership criminally liable for the actions of the Brigades.

Popular Front for the liberation of Palestine (PFLP)

The Popular Front for the Liberation of Palestine (PFLP), once a professedly Marxist alternative to mainstream Palestinian nationalist groups, has its roots in the Arab National Movement (ANM). The ANM was set up in Beirut, Lebanon, in 1948, following the first Arab-Israeli war and the establishment of the state of Israel. The first secretary-general of the ANM, George Habash, established the Popular Front for the Liberation of Palestine in 1967—following the second Arab-Israeli war—and was elected as the first PFLP secretary-general. The PFLP gained notoriety in the late 1960s and early 1970s for its role in commercial airline hijackings.

Background

The PFLP opposed the Madrid and Oslo peace processes and suspended its participation in the PLO for several years following the signing in 1993 of the Declaration of Principles between Israel and the PLO. Habash stepped down for health reasons in July 2000 and was succeeded by Abu 'Ali Mustafa, a founder and former commander in chief of the PFLP military forces, and deputy secretary-general since 1972. The PFLP had sought to have Mustafa based in the Palestinian-controlled areas, and Israel allowed him to return to the PA territories in October 1999, following a reconciliation between the PFLP and the PLO.

²⁴¹ Human Rights Watch interview with 'Awni al-Mashni, Dhaisha refugee camp, June 13, 2002.

During the current clashes, the PFLP has claimed responsibility for three suicide bombing attacks on civilians as well as car bombings, which reportedly injured several dozen civilians. In August 2001, Mustafa was killed by an Israel missile attack on his West bank office.²⁴² He was succeeded by Ahmad Sa'adat as secretary-general and 'Abd al-Rahim Malluh as deputy secretary-general. The PA detained Sa'adat on January 15, 2002, after he was reportedly lured to a hotel meeting with West Bank Palestinian intelligence chief Tawfiq Tirawi. He is currently detained in Jericho under U.S. and U.K. supervision.²⁴³ The IDF detained Malluh in mid-June 2002.

The PFLP has in the past called for the "liberation" of all of historic Palestine. The group's most recent platform, however, enunciated at its sixth national congress on July 7, 2000, continues to reject the Oslo Accords and later agreements between the PLO and Israel but accepts that "new realities have been created since Oslo that cannot be ignored: the emergence of the Palestinian Authority (PA) and the retreat of Israeli soldiers from ten Palestinian cities."²⁴⁴ It calls for the establishment of a Palestinian state with Jerusalem as its capital, withdrawal of Israeli soldiers to the 1967 borders, the dismantling of Israeli settlements, and the right of return for Palestinian refugees.²⁴⁵

Involvement in Suicide Bombings

In the context of the current clashes, the PFLP rose to prominence in October 2001 after its military wing, the Abu 'Ali Mustafa Brigades, assassinated the Israeli Minister for Tourism, Rehavam Ze'evi, on October 17. Prior to this attack, the PFLP took responsibility for five car bombings,

²⁴² The U.S. government condemned the missile attack because the office was located in a building inhabited by civilians, and Israel's policy of targeted killings was "an excessive use of force and unhelpful to efforts to quiet the ongoing violence." Kenneth Katzman, "Terrorism: Near Eastern Groups and State Sponsors, 2002," *CRS Report for Congress*, Library of Congress Congressional Research Service, February 13, 2002, p. 24 at <http://www.fas.org/irp/crs/RL31119.pdf> (accessed September 3, 2002).

²⁴³ In early June the Palestinian High Court in Gaza ruled that Sa'adat should be released because of the "absence of any charges leveled against him." See Fathi Sabah, "Israel threatens action if Sa'adat is released," *al-Hayat*, June 4, 2002. The Palestinian cabinet refused in response to threats by Israeli leaders that, in Prime Minister Sharon's words, "we will bring justice to him" if he were released. See Suzanne Goldenberg, "Palestinians ignore court call to free faction leader," *Guardian* (London), June 4, 2002.

²⁴⁴ PFLP press release, "The Popular Front for the Liberation of Palestine Finishes its Sixth National Conference," July 7, 2000 at <http://www.pfllp-pal.org/press/conferences.html> (accessed September 3, 2002).

²⁴⁵ *Ibid.*

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including four in Jerusalem within seven hours on September 4, 2001, in which nine people were injured.²⁴⁶

As of the end of August 2002, the PFLP had claimed responsibility for three suicide bombing attacks against civilians. On February 16, 2002, a suicide bomber blew himself up in a shopping mall on the West Bank settlement of Karnei Shomron, killing three teenagers and injuring around thirty. The attack was claimed by the Abu 'Ali Mustafa Brigades of the PFLP in a statement announcing that the bomber, Sadiq 'Abd al-Hafiz, had come from the West Bank town of Qalqiliya. The second attack, injuring fifteen people, targeted the lobby of a hotel on the outskirts of the Ariel settlement on March 7. In the third attack, on May 19, the suicide bomber disguised himself as an Israeli soldier and blew himself up at a Netanya open-air market, killing three and wounding fifty-nine. Hamas also claimed responsibility for this attack.

Structure

The PFLP has not claimed any separation between its military wing and its political leaders. As with the other armed Palestinian groups that have intentionally and repeatedly organized suicide attacks against civilians, persons carrying out attacks on civilians claimed by the PFLP are individually criminally liable for their actions. PFLP leaders are also liable both directly and under the doctrine of command responsibility.

Recruitment and Use of Children

The Palestinian Authority has endorsed international mechanisms that prohibit the use of children under the age of eighteen in hostilities. In April 2001, it sent a delegation to a regional conference on the use of child soldiers; the conference adopted a resolution declaring that "the use in hostilities of any child under eighteen years of age by any armed force or armed group is unacceptable."²⁴⁷ On May 9, 2002, the PA addressed the United Nations Special Session on Children and advocated the application of the Optional Protocol to the Convention on the Rights of the Child, which prohibits the recruitment or use in hostilities of those under the age of eighteen.²⁴⁸

²⁴⁶ Matthew Levitt and Ehud Waldoks, "The Return Of Palestinian Nationalist Terrorism," *Peacewatch*, no. 379, May 3, 2002 at <http://www.washingtoninstitute.org/watch/Peacewatch/peacewatch2002/379.htm> (accessed September 3, 2002).

²⁴⁷ Amman Declaration on the Use of Children as Soldiers, April 10, 2001.

²⁴⁸ Statement of Dr. Emile Jarjou'i, Head of Delegation of the Observer Delegation of Palestine on the occasion of the Special Session of the General Assembly on Children, May 9, 2002 at <http://www.un.org/ga/children/palestineE.htm> (accessed June 6, 2002).

Most perpetrators of suicide bombing attacks have been young men aged eighteen to twenty-four. At least three bombings, however, have been carried out by children—persons under the age of eighteen. At least two have been from the Bethlehem area, and all three attacks were claimed by the al-Aqsa Martyrs' Brigades. Muhammad Daraghme, age seventeen, killed himself and five other children when he carried out a suicide attack for the al-Aqsa Brigades on March 2, 2002, in an orthodox neighborhood of Jerusalem (eleven civilians were killed and almost fifty wounded). In another al-Aqsa Brigades attack in a park in Rishon Letzion on May 22, 2002, 'Issa Bdeir, age sixteen, killed two civilians and injured at least twenty-four. The third child bomber was Majd 'Atta, seventeen, who killed himself and injured five others in an attack on a falafel shop in central Jerusalem on July 30, 2002.

On June 28, 2002, an Israeli military court sentenced a sixteen-year-old boy to life imprisonment after he was apprehended in an attempt to blow himself up on or near a bus. At his sentencing, the boy said he had been "deceived" by Hamas into participating in the unsuccessful attack.²⁴⁹ Islamic Jihad acknowledged that to perpetrate a bombing on June 9, 2002 at Megiddo Junction, its members taught Hamza Samudi to drive; his age has been given variously as sixteen, seventeen, and nineteen.²⁵⁰

The participation, acknowledgment, and acceptance of the use of children to perpetrate suicide bombings have continued despite widespread Palestinian unease with such tactics. This unease intensified in April 2002 following three separate incidents in the Gaza Strip in which several Palestinian boys between the ages of fourteen and sixteen were killed as they charged the perimeter of an Israeli settlement armed with knives and crude pipe bombs.

By all accounts, no Palestinian group organized or sponsored these would-be attacks. Nevertheless, both Hamas and Islamic Jihad felt pressure to respond to a popular sense that the promotion of "martyrdom operations" had encouraged young people to participate in them. On April 24, the Palestinian Legislative Council "express[ed] its worry and disapproval toward this phenomenon as well as its refusal to accept its continuation" and "call[ed] on all

²⁴⁹ Amos Harel, "Failed suicide bomber, sixteen, sentenced to life in prison," *Ha'aretz*, June 28, 2002.

²⁵⁰ Brennan Linsley, "Car Bomber Just Learned to Drive," Associated Press, June 6, 2002.

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bodies and sectors related to this phenomenon to stop this trend in order to protect our children and their right to life.”²⁵¹

Hamas and Islamic Jihad both later disavowed the use of children. A Hamas statement, also on April 24, referring to the incidents as “a dangerous trend,” called on mosque imams “to give this issue some mention in their sermons” and on educators “to dedicate time to address this issue without sacrificing the enthusiasm or spirit of martyrdom of our youth [*ashbaluna*].”²⁵² An Islamic Jihad communiqué of April 26, citing Islamic strictures against the participation of children in war, declared: “We refuse any encouragement given to young people that might drive them to act alone or be pushed by others into action. They are not ready and not able to do so.” The statement called on “mothers, fathers, teachers, political leaders and presidents to work closely with, and advise children, on what will assist them and ...their communities to cope. Encourage them to concentrate on and complete their education, allow them to express their enthusiasm by participating in public demonstrations...and prepare them to face the enemy once they are adults.”²⁵³ However, neither group indicated a minimum age for recruitment, and the Arabic terms used do not rule out the use of children under the age of eighteen in military activities.

The al-Aqsa Brigades have not formally addressed the issue of employing children in armed actions but media reports indicate awareness of the matter among activists. One account, based on interviews with al-Aqsa Brigades and other militias in Nablus, reported that “the factions say that suicide volunteers under the age of eighteen are rejected.”²⁵⁴ An al-Aqsa Brigades fighter named Fayez Jaber told a reporter that age was among the group’s criteria for choosing volunteers. “A person has to be a fully matured person, an adult, a sane person, and of course, not less than eighteen years of age and fully aware of what he is about to carry out,” Jaber said.²⁵⁵

Such disavowals mischaracterize the use of children, as if the decision to carry out a suicide bombing were an entirely voluntary and independent act that

²⁵¹ The statement, referring to a council meeting of April 21, was issued by the office of the Speaker of the Legislative Council on the letterhead of the Palestinian National Authority.

²⁵² Access to this source at http://www.qassam.org/hamas/bayanat/24_04_2002 is currently blocked. Translated by Human Rights Watch.

²⁵³ Islamic Jihad communiqué, “Protect our children from being killed,” April 26, 2002. Translated by UNICEF, Jerusalem.

²⁵⁴ Paul McGeough, “Guided Missiles,” *Sydney Morning Herald*, April 13, 2002.

²⁵⁵ Gregg Zoroya, “Her decision to be a suicide bomber,” *USA Today*, April 22, 2002.